

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TRINA M. STANFORD,	§	
	§	No. 700, 2011
Appellant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware, in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE MERIT	§	C.A. No. N10A-12-009
EMPLOYEE RELATIONS BOARD,	§	
AND DELAWARE DEPARTMENT	§	
OF HEALTH AND SOCIAL	§	
SERVICES,	§	
	§	
Appellees Below,	§	
Appellees.	§	

Submitted: April 4, 2012

Decided: May 1, 2012

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

**ORDER**

This 1<sup>st</sup> day of May 2012, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Trina Stanford, the plaintiff-below (“Stanford”), appeals from a Superior Court order affirming a decision by the Merit Employee Relations Board (“MERB”) denying Stanford’s grievance that she was wrongfully fired from her job at the Department of Health and Social Services (“DHSS”). Stanford claims that both the Superior Court and the MERB erred by considering evidence that was improperly admitted and that also was insufficient to satisfy the “just cause”

standard. Stanford further claims her MERB hearing was procedurally unfair. We find no merit to these claims and affirm.

2. From November 5, 2001 to October 5, 2009, Stanford worked as an accounting specialist in the Division of Child Support Enforcement (“DCSE”) within the DHSS. Her unit processed child support payments. One of Stanford’s responsibilities was to ensure that those payments were properly completed and posted to the correct account.<sup>1</sup> Stanford’s performance was officially reviewed many times before she was fired. A review of her work for the period January 4, 2008 through May 29, 2008 found her performance “unsatisfactory,” because Stanford had committed 18 routine technical errors such as posting bad checks or posting checks to an incorrect account. On June 16, 2008, Stanford received a written reprimand to the effect that based on her previous performance reviews, her “total error margin” (.15%) was significantly higher than her unit’s average (.051%) in 2006, and remained high (at .085%) in 2007. One of Stanford’s supervisors later testified that her errors from January 2008 to May 2008 accounted for 55% of her unit’s total mistakes during that period.

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<sup>1</sup> In 2002, the State instituted an Employee Performance Plan that required Stanford to process payments quickly and accurately, consistent with federal regulations. By adhering to federal standards, the State qualified for funding amounting to about two-thirds of the administration costs associated with Stanford’s unit. Stanford signed the plan in 2002.

3. Stanford's performance did not improve after the reprimand.<sup>2</sup> For the period ending February 6, 2009, she received another unsatisfactory performance review that found, among other problems, "severe deficiencies in producing accurate results even with supervisory counseling." In an effort to increase efficiency, in February 2009, the State ended its "paper-based" processing system, and implemented an image-based system known as "RAPID." The MERB found that the new system "did not [improve] Stanford's work performance."<sup>3</sup> On August 27, 2009, Stanford was notified she was being fired. Stanford's termination letter stated that despite repeated efforts by her supervisors to help improve her job performance, her "performance continued to be unsatisfactory." That letter specified that between June 16, 2008 and February 6, 2009, Stanford had committed 43 errors, and that from February 10, 2009 to June 16, 2009, she had committed 16 errors.

4. A "pre-termination hearing" was held on September 23, 2009, after which Stanford was formally discharged, effective October 5, 2009. She then filed a grievance which, after a hearing, was denied on November 25, 2009. Stanford appealed that denial to the MERB, which by a 4-1 vote found that DHSS had "just

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<sup>2</sup> In 2008 and 2009, Stanford also took "intermittent leave" under the Family Medical Leave Act for stress, anxiety, and depression, which she attributed to her employer's "insistence on error-free check processing."

<sup>3</sup> From April 2, 2009 to August 13, 2009 she improperly processed 17 checks.

cause” to fire her. At the MERB proceeding, one of Stanford’s supervisors testified that “we’re shooting for no errors” and that “the ultimate goal in this position was to correctly identify and post every payment with a low margin of error.”

5. The MERB openly deliberated on October 17, 2010. During those deliberations, the MERB chairwoman “referred to her experience in human resource management at DHSS” in explaining her judgment that DHSS had properly terminated Stanford. At that point Stanford’s counsel “asked the Chair to recuse herself,” and “contended the Board was considering evidence outside the record in violation of due process [sic].” The MERB denied counsel’s request on the ground that “it is permissible to draw on [personal] experience in factual inquiries.”

6. In its final decision, the MERB held that the “just cause standard applies to a termination based on unsatisfactory job performance,” and that that standard required “a legally sufficient reason supported by job-related factors that rationally and logically touch upon the employee’s competency and ability to perform [her] duties.” The MERB found that the “record is replete with Stanford’s [processing] errors,” and that Stanford “did not convince the Board of any mitigating circumstances to show that termination . . . was inappropriate.” Although Stanford claimed that her unit’s “100% error-free check processing

[goal] is unrealistic,” the MERB concluded that the “record demonstrates that the DSCE did not hold any employee in the Payment Processing Unit to an error-free standard. . . .”

7. In its ruling, the MERB also addressed Stanford’s claim that State Merit Rule 12.8 precluded the MERB from considering evidence of “an employee’s unsatisfactory job performance more than two years [before] the notice of intent to terminate.”<sup>4</sup> Merit Rule 12.8 does not allow an agency to use “[a]dverse documentation” from more than two years before “a similar subsequent offense” when that agency seeks to discipline an employee for that “subsequent offense.”<sup>5</sup> The MERB concluded as a matter of law that Merit Rule 12.8 applies to disciplinary actions for specific “offenses,” not to performance-based dismissals. The MERB stated that it did not “rely” on Stanford’s 2006 and 2007 performance reviews (which occurred more than two years before her firing) when concluding that there was “substantial evidence” to justify Stanford’s dismissal. Yet, the MERB did cite the 2008 “reprimand,” which discussed the results of Stanford’s performance reviews in 2006 and 2007. The MERB also concluded that DHSS’

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<sup>4</sup> Chapter 12 of the State of Delaware Merit Rules (the “Merit Rules”) governs agency “employee accountability” standards and procedures for “Merit” employees.

<sup>5</sup> Merit Rule 12.8 states that “[a]dverse documentation shall not be cited by agencies in any action involving a similar subsequent offense after 2 years, except if employees raise their past work record as a defense or mitigating factor.”

evaluation of Stanford was based on a comparison of Stanford's error rates against her unit's average error rates.<sup>6</sup>

8. Stanford challenged the MERB's decision in the Superior Court, claiming violations of her constitutional due process rights and the Merit Rules. Among Stanford's claims was that the MERB had improperly considered "adverse" evidence that arose more than two years before her "termination notice" (the 2006 and 2007 performance reviews), in violation of Merit Rule 12.8. On November 30, 2011, the Superior Court affirmed the MERB's decision. The court found that "it appears that the Board did not [rely on] the 2006 and 2007 performance reviews" to justify Stanford's firing; moreover, substantial evidence warranted Stanford's dismissal. The court denied Stanford's claim related to the MERB chairwoman's reference to her personal experience, because "Stanford has not overcome the presumption of honesty and integrity" required to demonstrate a finding of "unconstitutional bias." This appeal followed.

9. Stanford presents four claims on her appeal to this Court. First, she claims that the State's undefined standards were arbitrary and capricious and that her firing "was not based on any identifiable standard," in violation of the Merit Rules and her due process rights under the Fourteenth Amendment of the United

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<sup>6</sup> The statistics derived from Stanford's 2006 and 2007 performance reviews were the only such specific comparisons cited in the MERB's decision.

States Constitution. Second, the MERB chairwoman's reference to her personal experience was improper. Third, the MERB's interpretation of Merit Rule 12.8 was "wrong;" and fourth, the MERB improperly denied Stanford the right to present certain evidence, which resulted in an unfair hearing.

10. "We review decisions of the MERB 'to determine whether [it] acted within its statutory authority, whether it properly interpreted and applied the applicable law, whether it conducted a fair hearing and whether its decision is based on . . . substantial evidence and is not arbitrary.'"<sup>7</sup> Substantial evidence is "such evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>8</sup> This Court reviews questions of law, including claimed constitutional violations and the interpretation of statutes and regulations, *de novo*.<sup>9</sup> That said, "[j]udicial deference is usually given to an administrative agency's construction of its own rules in recognition of its expertise in a given field," and that construction will be reversed only if it is "clearly wrong."<sup>10</sup>

11. Stanford first claims that the MERB accepted insufficient evidence of her substandard work performance as warranting a "just cause" dismissal, because

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<sup>7</sup> *Avallone v. DHSS et al.*, 14 A.3d 566, 570 (Del. 2011) (citations omitted).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*; *Ward v. Dept. of Elections*, 977 A.2d 900 (Del. 2009).

<sup>10</sup> *Id.* (citing *Div. of Soc. Servs. v. Burns*, 438 A.2d 1227, 1229 (Del. 1981)). The Merit Rules were adopted by the MERB pursuant to statutory delegation in 29 *Del. C.* § 5914.

DHSS never set any performance standards for error rates other than the aspirational goal of “100% error-free check processing.” Therefore, Stanford argues, there is no way to judge whether Stanford’s error rate was sufficiently poor to justify firing her.

12. In *Vann v. Town of Cheswold*,<sup>11</sup> this Court defined “just cause” as “a legally sufficient reason supported by job-related factors that rationally and logically touch upon the employee’s competency and ability to perform [her] duties.” The MERB applied the *Vann* standard in denying Stanford’s grievance. The record supports the MERB’s determination that there was “just cause” to fire Stanford. After Stanford was given notice of her “unacceptable” performance and a written reprimand in mid-2008, her first performance review in 2009 described “severe deficiencies in producing accurate results.” Later, between April 2 and August 13, 2009, Stanford’s supervisor notified her of 17 incorrectly processed checks. The MERB credited the employer’s evaluations, observing that “the record is replete with Stanford’s errors” and that her “job performance showed little if any improvement despite frequent counseling about these deficiencies.” These findings are sufficient for acceptance by a reasonable person; that is, they constitute “substantial evidence” that supports a finding of “just cause.” The findings are also “supported by job-related factors that rationally and logically

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<sup>11</sup> 945 A.2d 1118, 1122 (Del. 2008).



touch upon the employee's competency and ability to perform [her] duties," as *Vann* requires.<sup>12</sup>

13. We agree that Stanford had a "property interest" (derived from the "for cause" standard imposed by state law) in her state employment that merited constitutional protection.<sup>13</sup> Federal constitutional law confers certain procedural rights upon Stanford. In the employment area, those rights include "some opportunity for the employee to present [her] side of the case [before the firing]."<sup>14</sup> Stanford received that procedural protection, which is intended to ensure "that [affected parties] are given a meaningful opportunity to present their case."<sup>15</sup> The record establishes that Stanford received such a meaningful opportunity. Moreover, and as earlier discussed, the record shows that Stanford was held to Delaware's "just case" standard, which is the specific state law entitlement to which Stanford claims a property right. Stanford's claim that her firing violated her constitutional rights, therefore, lacks merit.

14. Stanford next claims that the MERB relied on facts outside the record in reaching its decision, specifically, allegedly improper remarks by the MERB

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<sup>12</sup> *Vann*, 945 A.2d 1118, 1122 (Del. 2008).

<sup>13</sup> *Board of Regents of State Colleges et al. v. Roth*, 408 U.S. 564, 577 (1972).

<sup>14</sup> *Cleveland Bd. Of Educ. v. Loudermill*, 470 U.S. 532, 542-43 (1985).

<sup>15</sup> *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976).

chairwoman about her past experience at DHSS.<sup>16</sup> Stanford relies on *Trader v. Caulk*,<sup>17</sup> a Superior Court decision reversing an Industrial Accident Board (“IAB”) ruling that denied benefits to an injured employee, after IAB members had observed the employee walk to his car and on that basis judged him not to be “totally disabled.” What Stanford complains of in this case, however, is that the MERB chairwoman conveyed her understanding of existing operating procedures, or rules, as distinguished from specific evidentiary facts bearing on the merits of the case. Even if that information were deemed “factual,” these statements were not legally consequential, because (in the language of *Trader*) “there is other sufficient competent evidence to support the administrative agency’s decision.”<sup>18</sup> This Court has previously approved a board member’s use of her expertise “as a tool for evaluating evidence,” as the MERB chairwoman apparently did here.<sup>19</sup> Therefore, Stanford’s second claim lacks merit.

15. Third, Stanford claims that the MERB violated Merit Rule 12.8 by admitting “adverse documentation” of her work performance that arose more than

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<sup>16</sup> Stanford describes the comments as being what the chairwoman “believed were the standard operating procedures . . . [and she] was quite convinced that the State followed the same procedure.”

<sup>17</sup> 1992 WL 148094 (Del. Super. June 10, 1992).

<sup>18</sup> *Id.*

<sup>19</sup> *Turbitt v. Blue Hen Lines, Inc.*, 711 A.2d 1214, 1216 (Del. 1998).

two years before. That documentation was submitted during the course of Stanford's appeal from her firing. The documents included a 2008 reprimand that, in turn, referred to Stanford's 2006 and 2007 performance reviews. The MERB ruled that Rule 12.8 did not bar that evidence, because "the [2008] reprimand [itself] was within two years" of Stanford's firing. Separately, the MERB also ruled that Rule 12.8 applied to documentation of disciplinary action for an "offense," but not to a "termination . . . based on unsatisfactory job performance." For that reason, "the agency's 'consideration is not limited to unsatisfactory performance within the past two years.'"

16. The MERB specifically cited the statistical analysis of Stanford's performance in relation to her unit's average in the 2006 and 2007 reviews that were described in the 2008 reprimand. It is plain from that reference that the MERB relied on "adverse documentation" that came into existence more than two years before Stanford's firing. That fact requires us to evaluate *de novo* the MERB's interpretation of Rule 12.8 as not barring the use of negative performance reviews in performance-based dismissals. A state agency's interpretation of its own regulations is entitled to deference, and will only be reversed if it is clearly wrong.<sup>20</sup> We conclude that the Rule's reference to "a similar subsequent offense" can be read to mean that Rule 12.8 is intended to prevent the use of documentation

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<sup>20</sup> *Ward v. Dept. of Elections*, 977 A.2d 900 (Del. 2009).

of outdated past disciplinary “offenses,” but not the use of “old” negative employment reviews in performance-based dismissals. We defer to the agency’s interpretation, and conclude that the MERB’s holding on that point was not clearly wrong.

17. Finally, Stanford claims that her MERB hearing was unfair, because the MERB denied her request to present certain evidence, including the determination by an Unemployment Referee that Stanford was entitled to unemployment benefits. The fatal flaw in this procedural unfairness claim is that Stanford makes no specific legal argument that would justify a finding of reversible error. Fairly read, her amorphous claims are, in substance, that the evidentiary rulings were generally unfair and, as such, violated her due process rights.<sup>21</sup> As DHSS states on appeal, no provision in the Merit Rules “governs the conduct of” Stanford’s grievance hearing, and “there is no record from the . . . proceedings that can be reviewed on appeal.” The procedural protection to which Stanford was entitled is the right to appeal her firing to the MERB. She exercised that right. With no clear basis for finding any error in the MERB proceeding, this claim lacks merit as well.

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<sup>21</sup> For example, she asserts that the “MERB very clearly does not believe that any of the steps in the grievance procedure before the appeal to the MERB are of any importance” and that “the MERB does not see its role as a protector of employees’ rights to due process.”

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice